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July 20, 2007

**BY E-FILE**

The Honorable Joseph J. Farnan, Jr.  
United States District Court, District of Delaware  
844 North King Street  
Wilmington, DE 19801

Re: *NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc.*  
C.A. No. 06-311 (JJF)

Dear Judge Farnan:

We write to inform the Court of the status of four litigations pending between the parties in the Northern District of Georgia.

**STS Software Sys. Ltd. v. Witness Sys., Inc. Civ. No. 1:04-CV-2111 (RWS)**

On July 20, 2004, STS Software Systems, Ltd. ("STS") served its initial complaint for infringement of U.S. Patent No. 6,122,665 ("the '665 patent") entitled "Communication Management System for Computer Network-Based Telephones", alleging that certain of Witness's products infringe the '665 patent. On July 7, 2005, STS was granted leave to file a Supplemental Complaint asserting that Witness is infringing three newly issued patents, 6,865,604 ("the '604 patent"); 6,871,229 ("the '229 patent"); and 6,880,004 ("the '004 patent"), which are all related to the '665 patent and pertain to the identical technology - - the receiving, storing, organizing and playing back of communication sessions over a computer network. Witness has asserted counterclaims contending that each of the patents-in-suit are invalid. STS is seeking injunctive relief, but not damages.

On February 14, 2006, STS provided Witness a covenant not to sue for infringement of the '665 patent, and, as a result, the '665 patent was withdrawn from the action.

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The parties appeared before Special Master Roderick McKelvie<sup>1</sup> for a Markman Hearing on July 27, 2006 and on October 10, 2006, Special Master McKelvie issued a Report and Recommendation that was adopted by the Court on January 16, 2007.

On June 26, 2007, STS filed an amended complaint adding its parent, NICE Systems Ltd. as a plaintiff to the action.

On July 18, 2007, the parties appeared before Judge Story for a scheduling conference during which Judge Story set the schedule for the case, including a trial date of "sometime on or before March 15, 2008."

**Witness Sys., Inc. v. NICE Sys., Ltd. & NICE Sys., Inc., Civ No. 1:04-CV-2531 (CAP)**

*Witness Systems, Inc. v. NICE Systems, Inc.*, 1:04-CV-2531-CAP (N.D.Ga.), was filed by Witness Systems, Inc. ("Witness") on August 30, 2004, asserting claims of patent infringement against NICE Systems, Inc. Six months later, asserting the same patents, Witness filed a separate infringement case against NICE Systems, Ltd. as a related case. On April 1, 2005, the parties jointly filed a proposed order to consolidate the two cases, which was entered by the Court on April 5, 2005.

Witness is asserting that the "screen capture" products of NICE infringe U.S. Patent No. 5,790,798 ("the '798 patent") and U.S. Patent No. 6,510,220 ("the '220 patent"), which are owned by Witness. Both the '798 and '220 patents are entitled "Method and Apparatus for Simultaneously Monitoring Computer User Screen and Telephone Activity From A Remote Location." Witness is seeking both damages and injunctive relief.

On September 7, 2006, the parties appeared before Special Master Roderick McKelvie for a Markman Hearing. Special Master McKelvie's Report and Recommendation on claim construction was issued on November 22, 2006 and the Court adopted Special Master McKelvie's Report on January 5, 2007.

Pursuant to the local rules, fact discovery closed on February 23, 2007. Expert reports have been exchanged and expert discovery was set to close on June 28, 2007. Because of scheduling difficulties involving the damages experts and in order to ensure that all expert discovery is completed within the discovery period, NICE moved to extend discovery until October 15, 2007. Witness has opposed this motion which is presently pending before the Court.

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<sup>1</sup> Special Master McKelvie has been appointed special master in the following actions involving the parties: *STS Software Systems, Inc. v. Witness Systems, Ltd.*, Civ. No. 1:04-02111(RWS); *Witness Sys., Inc. v. NICE Sys., Ltd. & NICE Sys., Inc.*, Civ. No. 1:04-2531 (CAP), and *Witness Sys., Inc. v. NICE Sys., Ltd. & NICE Sys., Inc.*, Civ. No. 1:06-00126 (TCB).

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Also pending before the Court are NICE's two motions to amend its Answer and Counterclaims to assert that the patents in suit are unenforceable by reason of Witness's inequitable conduct.

**Witness Sys., Inc. v. NICE Sys., Ltd. & NICE Sys., Inc. Civ No. 1:06-CV-00126 (TCB)**

On January 19, 2006, Witness filed suit against NICE asserting infringement of U.S. Patent No. 6,404,857 entitled "Signal Monitoring Apparatus For Analyzing Communications." A Markman Hearing, presided over by Special Master McKelvie, was held on February 9, 2007. NICE also submitted a Motion for Summary Judgment on Patent Invalidity to Special Master McKelvie. On May 8, 2007, Special Master McKelvie submitted his Reports and Recommendations on claim construction and NICE's motion for summary judgment. NICE filed objections to the Special Master's Reports. The Court has yet to enter an Order on either issue.

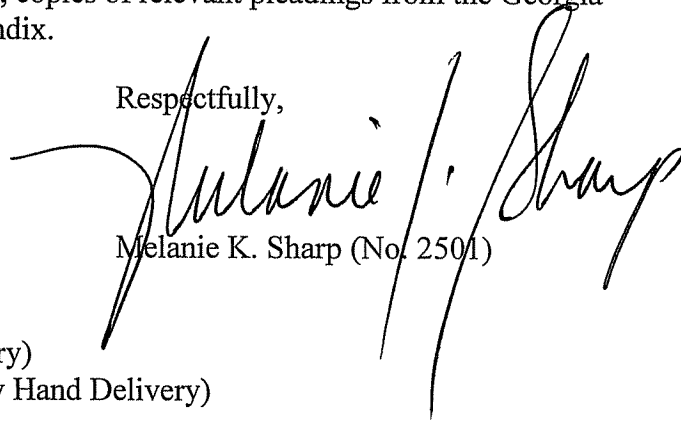
**NICE Sys., Ltd. & NICE Sys., Inc. v. Witness Sys., Inc., Civ. No. 1:06-CV-3122 (TCB)**

On December 27, 2006, NICE filed a declaratory judgment action seeking a determination that U.S. Patent No. 6,757,361 entitled "Signal Monitoring Apparatus Analyzing Communications Content" (a patent related to the patent at issue in *Witness Sys., Inc. v NICE Sys. Ltd. & NICE Sys., Inc.*, Civ. No. 1:06-CV-00126 (TCB)) was invalid and not infringed by NICE. NICE moved to consolidate this action with the above referenced action already pending before Judge Batten, but, the Court denied NICE's motion.

Witness has not yet filed its Answer and instead filed a motion to dismiss the complaint on the ground that the court lacks subject matter jurisdiction over the claims. Witness's motion to dismiss is still pending before Judge Batten.

For the Court's convenience, copies of relevant pleadings from the Georgia litigations are submitted in a separate appendix.

Respectfully,

A handwritten signature in black ink, appearing to read "Melanie K. Sharp", is written over the typed name. The signature is fluid and cursive.

Melanie K. Sharp (No. 2501)

MKS

cc: Clerk of the Court (by Hand Delivery)  
William J. Marsden, Jr., Esquire (by Hand Delivery)